

PROB. 12B
(7/93)

ORIGINAL

United States District Court

FILED IN THE
UNITED STATES DISTRICT COURT
DISTRICT OF HAWAII

for the

DISTRICT OF HAWAII

MAY 23 2006
at 3 o'clock and 30 pm M
SUE BEITIA, CLERK**Request for Modifying the Conditions or Term of Supervision
with Consent of the Offender***(Probation Form 49, Waiver of Hearing is Attached)*

Name of Offender: DARRICK PALENCIA

Case Number: CR 01-00056HG-01

Name of Sentencing Judicial Officer: The Honorable Helen Gillmor
Chief U.S. District Judge

Date of Original Sentence: 9/26/2001

Original Offense: Bank Robbery, in violation of 18 U.S.C. § 2113(a), a Class C felony

Original Sentence: 46 months of imprisonment followed by 3 years of supervised release. The following special conditions were ordered: 1) that the defendant participate in a substance abuse program, which may include drug testing at the discretion and direction of the Probation Office; 2) that the defendant is prohibited from possessing any illegal or dangerous weapons; 3) that the defendant provide the Probation Office access to any requested financial information; and 4) that the defendant is prohibited from incurring credit charges and lines of credit without the prior approval of the Probation Office; and 5) that the restitution of \$352 is due immediately to American Savings Bank, 915 Fort Street Mall, 7th Floor, Honolulu, Hawaii 96813, Attention: Bert Corniel, and that any remaining balance upon release from confinement be paid during the period of supervision on an installment basis according to the collection policy of the Probation Office but at a rate of not less than 10 percent of his gross monthly income. Interest, if applicable, is waived while the defendant is serving his term of imprisonment and shall commence to accrue on any remaining balance upon his release on supervision.

Type of Supervision: Supervised Release Date Supervision Commenced: 6/17/2004**PETITIONING THE COURT**☒ To modify the conditions of supervision as follows:

Special Condition No. 6: That the defendant shall submit his person, residence, place of employment, or vehicle to a search conducted by the U.S. Probation Office at a reasonable time and in a reasonable manner, based upon reasonable suspicion of contraband or evidence of a violation of a condition of supervision. Failure to submit to a search may be grounds for revocation. The defendant shall warn any other resident that the premises may be subject to search pursuant to this condition.

CAUSE

On 10/9/2004, a Report on Offender Under Supervision (Probation Form 12A) notified the Court that the offender failed to pay at least 10 percent of his gross monthly income in accordance with the collection policy of the Probation Office for the months of June 2004, August 2004, and September 2004. This officer recommended that the Court not take action against the offender given that he was employed full-time, was compliant with drug testing and drug treatment, and appeared sincere about complying with the supervision requirements. Subsequently, the offender satisfied his Court-ordered restitution on 11/15/2004.

On 12/22/2004, a Report on Offender Under Supervision notified the Court that on 12/18/2004, the offender admitted that he smoked crystal methamphetamine on 12/15/2004. This officer recommended that the Court not take action against the offender given that he agreed to participate in individual drug treatment and the most intensive drug testing regimen. The Court agreed with this officer's recommendation.

On 3/3/2005, a Report on Offender Under Supervision notified the Court that the offender: 1) refused to submit to drug testing on 12/20/2004 and 1/25/2005, and refused to participate in drug treatment on 12/22/2004 and 1/19/2005; and 2) submitted urine specimens on 2/9/2005 and 2/13/2005 which tested positive for methamphetamine and amphetamine. This officer recommended that the Court not take action against the offender given that he agreed to enter residential drug treatment at Salvation Army's Adult Rehabilitation Center (ARC). The Court agreed with this officer's recommendation.

On 3/14/2006, the Court modified the offender's supervised release conditions as follows:

General Condition: That the defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of the commencement of supervision and at least two drug tests thereafter but no more than eight valid drug

tests per month during the term of supervision (mandatory condition).

Special Condition No. 1: That the defendant shall participate and comply with substance abuse treatment which includes drug and alcohol testing, at the discretion and direction of the Probation Office. The defendant is to refrain from the possession and/or use of alcohol while participating in substance abuse treatment.

The modifications were to address this officer's concern regarding the offender's: 1) tenuous relationship with his girlfriend; 2) unstable work hours; and 3) sobriety from illicit drug use.

Since 3/14/2006, the offender violated the terms of his supervision as follows:

Violation No. 1: Urine specimen submitted on 4/11/2006 tested positive for methamphetamine and amphetamine, and admission of methamphetamine use on 4/9/2006:

On 4/11/2006, the offender reported to the Probation Office as instructed. The offender submitted a urine specimen which tested positive with a non-instrumented drug testing device (NIDT) kit. Because positive results with the NIDT kits are considered "presumptive positive results," the urine specimen was sent to Scientific Testing Laboratories, Inc. (STLI) for confirmation testing.

Thereafter, this officer questioned the offender regarding the urine test result. The offender admitted that he had been using methamphetamine for approximately one month. Additionally, the offender admitted that he last used methamphetamine on 4/9/2006. Upon further questioning, the offender related that he started using methamphetamine to keep him awake at night while at work at WalMart. In this regard, the offender reported that while waiting at his bus stop in Ewa Beach, he would purchase "ice" from unknown loiterers in the area and smoke the drug before boarding the bus to work. The offender further related that although he has the opportunity to sleep during the day, his mother's home is always busy because someone is always home. This officer informed the offender that he was in violation of his supervision and that the Court would be notified.

On 4/21/2006, STLI informed this officer that the offender's 4/11/2006 urine specimen was positive for methamphetamine and amphetamine.

On 5/4/2006, the offender reported to the Probation Office as instructed. The offender was advised that he would be placed back into substance abuse treatment and testing at Hina Mauka - Waipahu. The offender was also advised that in light of his drug use, this officer would request the Court to modify his supervised release conditions to include a search condition. The offender agreed to the modification.

Please be advised the offender is entitled to a hearing and counsel before this new condition is imposed. However, a signed Waiver of Hearing to Modify Conditions of Probation/Supervised Release is attached. The offender waives his right to a hearing and to assistance of counsel. He further agrees to the modification of the conditions of supervision. The U.S. Attorney's Office and the offender's counsel, Assistant Federal Public Defender Loretta Faymonville, have been notified of the proposed modification and have no objections.

Please also be advised that should the offender continue to abuse illicit drugs and/or fail to report for drug treatment and/or drug testing, Court action will be requested.

Respectfully submitted by,



DEREK M. KIM
Senior U.S. Probation Officer

Approved by:



GENE DeMELLO, JR.
Supervising U.S. Probation Officer

Date: 5/8/2006

THE COURT ORDERS:

- ☒ The Modification of Conditions as Noted Above
☐ Other

*one more missed test or positive
 bring him back to court*



HELEN GILLMOR
Chief U.S. District Judge

5.17.06

Date

PROB 49
(5/96)

United States District Court

District of Hawaii

Waiver of Hearing to Modify Conditions of Probation/Supervised Release and/or Extend Term of Supervision

I have been advised and understand that I am entitled by law to a hearing and assistance of counsel before any unfavorable change may be made in my Conditions of Probation and Supervised Release and/or my period of supervision being extended. By "assistance of counsel," I understand that I have the right to be represented at the hearing by counsel of my own choosing if I am able to retain counsel. I also understand that I have the right to request the court to appoint counsel to represent me at such a hearing at no cost to myself if I am not able to retain counsel of my own choosing.

I hereby voluntarily waive my statutory right to a hearing and to assistance of counsel. I also agree to the following modification of my Conditions of Probation and Supervised Release and/or to the proposed extension of my term of supervision:

- [] To extend the term of supervision for years, for a total term of years.
[✓] To modify the conditions of supervision as follows:

Special Condition No. 6:

That the defendant shall submit his person, residence, place of employment, or vehicle to a search conducted by the U.S. Probation Office at a reasonable time and in a reasonable manner, based upon reasonable suspicion of contraband or evidence of a violation of a condition of supervision. Failure to submit to a search may be grounds for revocation. The defendant shall warn any other resident that the premises may be subject to search pursuant to this condition.

Witness:



DEREK M. KIM
Senior U.S. Probation Officer

Signed:



DARRICK PALENCIA
Supervised Releasee

5/4/06

Date